

**Federal Communications Commission
Washington, D.C. 20554**

In The Matter Of)	
)	
SAGA COMMUNICATIONS OF NEW)	File No. EB-01-IH-0230
ENGLAND, INC.)	NAL/Acct. No. 20043208000014
)	
Licensee of Station WLZX(FM),)	Facility ID No. 46963
Northampton, Massachusetts)	FRN No. 0002749406

ORDER ON RECONSIDERATION

Adopted: March 1, 2005

Released: March 2, 2005

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we deny a Petition for Reconsideration (“*Petition*”)¹ by Saga Communications of New England, Inc. (“Saga”) of a Forfeiture Order (“*Forfeiture Order*”) for \$4,000.² In the *Forfeiture Order*, we found that Saga had violated section 73.1206 of the Commission’s rules³ by recording a telephone conversation for broadcast without first informing the other party to the conversation of its intention to do so. The *Forfeiture Order* was based on a complaint by Western Mass Radio Company, licensee of Station WRNX(FM), Amherst, Massachusetts, alleging that a Saga on-air personality initiated and recorded a telephone conversation with an on-air personality of WRNX(FM) while pretending to be a listener, and later broadcast the conversation without authorization.⁴ In the *Petition*, Saga first argues that, as a company, it did not “willfully” violate section 73.1206 because it had taken reasonable precautions to prevent such violations by its employees, and that these precautions and certain remedial steps thereafter show that it acted in good faith. Second, Saga claims that the *Forfeiture Order* improperly considered two prior Notices of Violation against it in determining the forfeiture amount because there has been no final disposition in those proceedings.

II. DISCUSSION

A. The Violation Was “Willful” And Saga’s Claimed Good Faith Does Not Relieve It Of Liability

2. Saga concedes that its employee deliberately called and recorded the employee of the other station without notice and later broadcast the recorded conversation once.⁵ As it did in response to

¹Saga Communications of New England, Inc., Petition for Reconsideration, filed November 15, 2004 (“*Petition*”).

²*Saga Communications of New England, Inc.*, Forfeiture Order, 19 FCC Rcd 19743 (Enf. Bur. 2004) (“*Forfeiture Order*”).

³Section 47 C.F.R. § 73.1206.

⁴See Letter from Thomas G. Davis, President, Western Mass Radio Company, to Magalie Roman Salas, Secretary, Federal Communications Commission, dated February 1, 2001. The WRNX(FM) employee was not on the air at WRNX(FM) at the time of the conversation.

⁵*Petition* at 2-3.

the Notice of Apparent Liability (“NAL”) in this proceeding,⁶ Saga again claims, however, that this isolated broadcast of an unauthorized telephone conversation—against its prior directive to employees regarding compliance with section 73.1206—is not a “willful” violation by Saga as a company when it had taken all reasonable precautions to avoid such violations by its employees.⁷ Saga further argues that, even if its employee acted “willfully” in violating the Commission’s rule, Saga’s good faith precautions and subsequent remedial measures to prevent future violations should relieve it of liability as a company for its employee’s wrongful act.⁸

3. We rejected these arguments in the *Forfeiture Order*,⁹ and we do so again.¹⁰ A “willful” violation under section 503(b) of the Communications Act of 1934, as amended (the “Act”),¹¹ means the conscious and deliberate commission or omission of an act, irrespective of any intent to violate the law.¹² Moreover, a licensee is responsible for the acts and omissions of its employees, and when the actions of employees have resulted in violations, we will not excuse licensees from forfeiture penalties.¹³ Saga’s assertion that, as a company, it took precautions against such violations is immaterial to a finding under these principles that it committed a willful violation. In addition, we reject Saga’s argument that these precautions, in conjunction with certain claimed remedial measures, show sufficient good faith for us to cancel or reduce the forfeiture for the admittedly willful act of this employee.¹⁴ We have consistently refused to consider post-investigation remedial measures in other cases involving potential violations of section 73.1206.¹⁵

⁶See *Saga Communications of New England, Inc.*, Notice of Apparent Liability, 19 FCC Rcd 2741 (Enf. Bur. 2004) (“NAL”).

⁷*Id.* at 3-5 (cf. Saga Response to Notice of Apparent Liability for Forfeiture, filed March 22, 2004, at 3-7).

⁸*Id.* at 4-5.

⁹See *Forfeiture Order*, 19 FCC Rcd at 19744-45, ¶¶ 4-6.

¹⁰Reconsideration is appropriate only where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner’s last opportunity to present such matters. A petition that simply reiterates arguments previously considered and rejected will be denied. *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966); *Pinnacle Communications, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 15496, ¶ 1 (1996); 47 C.F.R. § 1.106(c).

¹¹47 U.S.C. § 503(b).

¹²See 47 U.S.C. § 312(f)(1); *Application for Review of Southern Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88, ¶ 5 (1991) (“*Southern Broadcasting*”). Saga mischaracterizes *Southern Broadcasting*, incorrectly stating that the forfeiture in that case was decided on the basis of the misconduct being a repeated violation and that the Commission did not reach the question of willfulness. See *Petition* at 3-4. On the contrary, willfulness was the chief basis for forfeiture in *Southern Broadcasting*, and repetition was mentioned only as an alternative ground. See 6 FCC Rcd at 4387-88, ¶ 5.

¹³See, e.g., *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, ¶ 7 (2002). See also *Forfeiture Order*, 19 FCC Rcd at 19744, ¶ 5, n. 12 & n. 13 for further decisions to this effect.

¹⁴In response to the *Forfeiture Order*’s rejection of this argument, 19 FCC Rcd at 19744-45 & n. 15, Saga again cites *Infinity Broadcasting Corporation*, Memorandum Opinion and Order, 16 FCC Rcd 20156 (Enf. Bur. 2001) and *Long Nine, Inc.*, Forfeiture Order, 15 FCC Rcd 15747 (Enf. Bur. 2000) to support its claim that it acted in good faith as a company. *Petition* at 4-5 & n. 6. Both of these decisions, however, concern section 73.1206 violations in which the on-air employee himself could have reasonably believed that the recording and broadcast were authorized, whereas in Saga’s case, the employee could not have reasonably believed that they were authorized.

¹⁵See, e.g., *Mid-Missouri Broadcasting, Inc.*, Notice of Apparent Liability for Forfeiture, DA 04-3683 (Enf. Bur. rel. Nov. 24, 2004) (regarding prank call by on air radio personality to crisis hotline without prior notification of intent

(continued....)

B. The Forfeiture Order Properly Considered Notices Of Violation In Other Proceedings In Determining The Forfeiture Amount

4. The *Forfeiture Order* imposed a \$4,000 forfeiture against Saga,¹⁶ which is the base forfeiture amount established under the *Forfeiture Policy Statement* for the unauthorized broadcast of a telephone conversation.¹⁷ In making this determination, we rejected Saga's contention that we should reduce the forfeiture because of its asserted history of overall compliance with the Act and the Commission's rules. We noted that the Bureau had, in fact, found various Saga affiliates in violation of the Commission's rules in several other proceedings in the past four years, two of which we cited by way of example.¹⁸ The *Petition* states that in both cases, Saga had responded to the Notice of Violation and there was no final disposition of the matter.¹⁹ Accordingly, Saga maintains, the Bureau's reference to these prior proceedings violates section 504(c) of the Act.²⁰

5. We properly cited the two prior violations to rebut Saga's claim of a record of overall compliance. Moreover, as Saga must be aware, in addition to these two cited examples, there were three other such proceedings in the four-year period ending December 2002.²¹ Saga's reliance on section 504(c) is inapposite here since that provision applies only to the reliance of unpaid, non-court adjudicated NALs in subsequent proceedings and not to reliance on Notices of Violation. In each of the NOVs mentioned above, the Commission staff found violations of various FCC rules. The fact that the staff did not take more severe enforcement action (e.g., issuance of an NAL) following Saga's response to these NOVs does not negate the violations listed in the NOVs. The Commission has consistently rejected history of overall compliance claims based on issuance of NOVs in other cases.²²

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to broadcast, Bureau proposed base forfeiture amount for section 73.1206 violation notwithstanding licensee's claim that this was an "isolated incident" and that the licensee had taken remedial measures).

¹⁶See *Forfeiture Order*, 19 FCC Rcd at 19744-45, ¶ 6.

¹⁷See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁸See *Forfeiture Order*, 19 FCC Rcd at 19745 & n. 17.

¹⁹*Petition* at 6-8.

²⁰47 U.S.C. § 504(c).

²¹See, e.g., *Saga Communications of Iowa, Inc.*, Notices of Violation, EB-01-KC-228 to EB-01-KC-233 (Enf. Bur. Kansas City Office, Jan. 25, 2001) (various part 11 and part 73 radio broadcasting violations, 47 C.F.R. parts 11, 73). Coincidentally, the multiple violations cited in this series of five notices, listing a total of 26 violations, occurred on the exact same date—January 25, 2001—as Saga's unauthorized recording and broadcast over WLZX(FM) in the instant proceeding.

²²See *Forfeiture Policy Statement*, 12 FCC Rcd at 17102-04, ¶¶ 32-36; *on recon.*, 15 FCC Rcd at 303-305, ¶¶ 3-5 (1999).

III. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT the Petition for Reconsideration filed on November 15, 2004 by Saga Communications of New England, Inc. IS DENIED.

7. IT IS FURTHER ORDERED THAT a copy of this Order on Reconsideration shall be sent by Certified Mail - Return Receipt Requested to: Lawrence D. Goldberg, Vice President, Saga Communications of New England, Inc., 15 Hampton Avenue, Northampton, Massachusetts 01060; and its counsel, Gary S. Smithwick, Esquire, Smithwick & Belendiuk, P.C., 5028 Wisconsin Avenue, N.W., Suite 301, Washington, D.C. 20016.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau